

REMARKS

Applicant cancelled claims 127 and 164 without prejudice or disclaimer of their subject matter and amended claims 125 and 160 to further define Applicant's invention.

In the Office Action, the Examiner indicated that claims 127 and 133 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Examiner rejected claims 125, 126, 128-132, and 134-172 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,484,437 to Michelson ("Michelson '437"). Applicant respectfully traverses the Examiner's rejection. According to 35 U.S.C. § 102(e), the reference being applied must be on an application for a patent "by another." (See 35 U.S.C. § 102(e), quoted on page 2 of the Office Action). The applicant of the present application is also the applicant of Michelson '437. Accordingly, Michelson '437 does not qualify as prior art under 35 U.S.C. § 102(e).

In order to expedite prosecution of the above-identified application, Applicant amended independent claim 125 to include the allowable subject matter of claim 127. Applicant submits that independent claim 125 is allowable and that dependent claims 126 and 128-159 dependent from independent claim 125, or claims dependent therefrom, are allowable at least due to their dependency from an allowable independent claim.

Applicant amended independent claim 160 to include the subject matter of dependent claim 164. Independent claim 160, as now amended, recites the steps of removing bone through the milling block along respective first and second tracks, "at least one of the removing steps including moving the bone removal device along the width of the vertebral bodies." The amendments to claims 125 and 160 were not made in response to the Examiner's rejections. Nonetheless, even if the disclosure of Michelson '437 could be asserted as prior art, Applicant submits that Michelson '437 does not teach or suggest moving the bone removal device across the width of the

vertebral bodies using the device shown in Figs. 7E and 7F. (See Michelson '437, Figs. 7E and 7F).

Applicant submits that independent claims 125 and 160 are patentable and that dependent claims 126, 128-159, 161-163, and 165-172 dependent from independent claims 125 or 160, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner. Applicant submits that the proposed amendments of claims 125 and 160 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

In view of the foregoing remarks, it is respectfully requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted,
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